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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,816	08/08/2006	Michael A. Roes	8042-002-US	6681
32301 7590 06/16/2008 CATALYST LAW GROUP, APC 9710 SCRANTON ROAD, SUITE S-170 SAN DIEGO, CA 92121				
EXAMINER				
RICHMAN, GLENNE				
ART UNIT		PAPER NUMBER		
3764				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/597,816

Applicant(s)

ROES, MICHAEL A.

Examiner

/Glenn Richman/

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 March 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-10 and 12-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1,3-10 and 12-20 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3-10, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no antecedent basis for "the housing" -- claim 1, line 3.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 6-10, 12-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Tanida.

Tanida discloses a biometric input device exposed on an exterior of the housing 2A, the biometric input device for biometric identification of a user col. 4, lines 23 – et seq., an electronics component electrically connected to the biometric input device fig. 2; a communication device electrically connected to the electronics component fig. 2, a plurality of user profiles fig 7A, 7B, and a means for updating the plurality of user profiles with measurement data measured by the weight device col. 3, lines 18-23.

Tanida discloses a platform for obtaining measurement information from a user and to obtain a biometric input from said user when said user is in a position to deliver said measurement information col. 1, lines 53 - et seq., said biometric input device is located on the weight device such that when a user is using said weight device both the measured information and the biometric input are obtained while the user is in a single position (fig. 1), said biometric input device is located on the platform of said weight device allowing said biometric input device to obtain biometric input from the same user position as said weight device will obtain measured information fig. 1, said biometric input device obtains biometric input and communicates said biometric input to the electronics component for screening against a plurality of user profiles stored on said electronics component col. 4, lines 6 – et seq., a plurality of user profiles are identified and secured using biometric input received from said biometric input device col. 4, lines 6 – et seq., the electronics component further comprises means for creating, a means for accessing and a means for editing a plurality of user profiles the electronics component further comprising measurement information col. 4, lines 23 – et seq., said communication device is a visual indicator fig. 1, said communication device is an LCD

The method claims 14-20 are inherent in the corresponding apparatus claims and are rejected for the reasons above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3764

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanida in view of Osten.

Tanida discloses further comprising a platform to accept said user's feet for obtaining measured information fig. 1

Tanida does not disclose said biometric input is a toe print.

Osten disclose a toe print as biometric data (col. 7, lines 34-41).

It would have been obvious to use Osten's toe print sensor with Tanida's device, as it is well known to use a toe print, as taught by Tanida, for identifying a user.

Osten further discloses said biometric input device further comprises a scanner component (col. 7, lines 34-41).

Response to Arguments

Applicant's arguments filed 3/18/08 have been fully considered but they are not persuasive.

As to the applicant's arguments:

1. The present invention is distinguishable from the prior art in that the digital weight apparatus has a microprocessor that manages and tracks user's profiles. The profiles are more sophisticated than the stored personal data that is only used for the single purpose of calculating percent body fat. For example, the profiles allow the user to add data input after the initial set up procedure, such as target measurement

information. Further, profiles of the present invention stored in the device can allow user to compare target data with measured data and also present past and present data in the form of trends.

As to 1 above, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., microprocessor, target measurement, compare target data with measured data and also present past and present data in the form of trends) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

2. Independent Claim 1 herein has been amended to include the device having user profiles that are updated with measurement information. These limitations are not present in the cited art. Independent method Claim 14 similarly contains the limitation "updating said current user's individual user profile with the measurement information."

As to 2 above, as discussed in body of rejection, Tanida discloses updated user profiles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Glenn Richman/ whose telephone number is 571-272-4981. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on (571)272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Glenn Richman/
Primary Examiner
Art Unit 3764